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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: SatoTravel

File: B-287655

Date: July 5, 2001

James H. Roberts, III, Esq., and David A. Leib, Esq., Manatt, Phelps & Phillips, for the protester.

Josephine L. Ursini, Esq., for N&N Travel and Tours, Inc., an intervenor.

John D. Inazu, Esq., Michael G. Vecera, Esq., and Gerald M. Lawler, Esq., Department of the Air Force, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Awardee took no exception to the terms of the solicitation by proposing to provide commercial travel office services at no cost to the government in any of the performance periods as evidenced by its insertion on the solicitation's price schedule of "\$zero" for the base period and a discount fee/rebate (an amount less than "\$zero") for each of the option periods.

DECISION

SatoTravel protests the award of a contract to N&N Travel and Tours, Inc. under request for proposals (RFP) No. F41689-00-R-0065, issued by the Department of the Air Force for official commercial travel office services at various Air Force facilities. SatoTravel essentially contends that N&N's proposal did not conform to the terms of the RFP and could not properly form the basis for award.

We deny the protest.

The RFP contemplated the award of a fixed-price requirements contract (no guaranteed minimum) for the base period and eight 6-month option periods to the responsible offeror whose proposal represented the best value to the government, the mission capability technical evaluation factor (staffing and personnel qualifications, performance plan, and small and small disadvantaged business participation), past performance, and price considered. Proposals determined technically acceptable would be ranked according to price, and then the offerors'

past performance would be evaluated and assigned an adjectival rating (as relevant here, exceptional/high confidence; very good/significant confidence; and satisfactory/confidence). With respect to price, offerors were to insert on the RFP schedule a “service fee” for air transactions in the base and each option period. (The RFP included estimated workloads for use in preparing proposals, but advised offerors that actual requirements were subject to substantial variation in quantity over time.) The RFP stated that a past performance/price tradeoff would be made, with past performance being evaluated on a basis approximately equal to price.

Six firms, including SatoTravel (the incumbent contractor) and N&N, submitted proposals. After discussions, the proposals of SatoTravel and N&N were determined technically acceptable. With respect to past performance, SatoTravel received an exceptional/high confidence rating, while N&N received a satisfactory/confidence rating. Regarding price, SatoTravel inserted on the RFP schedule for each period of performance a service fee per air transaction higher than zero, *i.e.*, a positive monetary amount. Under SatoTravel’s pricing scheme, the agency calculated that it would pay approximately \$1.4 million in service fees to SatoTravel over the term of the contract. In contrast, N&N inserted on the RFP schedule a service fee of “\$zero” per air transaction for the base period; for each option period, N&N inserted an amount less than zero, *i.e.*, a negative monetary amount, which was labeled by N&N as representing a “discount fee” per airline ticket. In other words, for the base and option periods, N&N proposed a service fee of zero and, as an added incentive in the option periods, N&N proposed a monetary rebate to the agency for each air transaction. Under N&N’s pricing scheme, the agency calculated that over the term of the contract, N&N would rebate to the agency approximately \$190,350. Finally, the agency determined that both SatoTravel and N&N submitted prices that were fair and reasonable based on current market conditions, competition, and market research and information obtained during discussions, and that both firms were financially responsible.

The source selection authority (SSA) recognized that SatoTravel’s proposed service fees were significantly less than what was being charged under the predecessor contract; that SatoTravel received an exceptional/high confidence past performance rating; and, that SatoTravel’s performance as the incumbent was excellent and highly relevant. The SSA also recognized that N&N received a satisfactory/confidence rating, noting that N&N has provided commercial travel office services at a number of Air Force bases and that the firm’s proposed subcontractors also had relevant commercial travel office experience. The SSA pointed out that most of N&N’s references reported highly satisfactory or satisfactory performance by the firm. The SSA reported that unfavorable past performance reports for N&N were investigated, but these reports “did not result in discernible doubt” regarding N&N’s ability and commitment to provide high quality travel services. References for N&N’s proposed subcontractors reported exceptional, very good, and satisfactory performance. The SSA noted that since N&N proposed a service fee of zero for the base period and discount fees/rebates in the option periods, N&N’s proposal would result in no costs

to the government over the term of the contract. Agency Report (AR), Tab 14, Source Selection Decision Document, at 3-4.

In accordance with the terms of the RFP, which provided that past performance and price were approximately equal in importance, and recognizing that since the estimated difference in cost between the proposals of N&N and SatoTravel was approximately \$1.6 million over the term of the contract, the SSA determined that in the current environment of restricted travel funds, she could not justify paying such a significant premium to SatoTravel, despite its exceptional/high confidence performance rating, when N&N had relevant satisfactory past performance and a proven record of satisfying travel service requirements for the Air Force over an extended period of time. Accordingly, the agency awarded a contract to N&N, the firm submitting the best value proposal. Id. at 4.

SatoTravel basically argues that N&N, in proposing discount fees/rebates, submitted a nonconforming, technically unacceptable proposal. SatoTravel complains that this pricing scheme is inconsistent with the terms of the RFP, which called for the insertion of a “service fee” for each period of performance. SatoTravel maintains that it was prejudiced by the agency’s relaxation of a material RFP term for N&N, and, as a result, the firms were not competing on an equal basis. We disagree.

Our analysis begins with the premise that an offeror may elect not to charge for a certain item and if it indicates a commitment to furnish the item in question, for example, by inserting “\$0” in its proposal, its proposal is compliant. GTSI Corp., B-286979, Mar. 22, 2001, 2001 CPD ¶ 55 at 6; Integrated Protection Sys., Inc., B-229985, Jan. 29, 1988, 88-1 CPD ¶ 92 at 2. Here, while under the terms of the RFP, offerors were requested to insert a “service fee” for each period of performance, the RFP did not prohibit a firm from proposing a fee of zero, or even a negative fee, and such a fee was not inconsistent with the terms of the RFP. Under N&N’s pricing scheme, where the firm inserted on the RFP schedule a service fee of “\$zero” for the base period and a fee of zero plus an incentive (discount fees/rebates) for the option periods, the firm committed to provide the required services for no cost to the government in any of the performance periods. N&N did not take exception to the RFP requirement to identify its proposed service fees; rather, N&N elected not to charge the agency for providing the required services in any of the performance periods, plus it proposed discount fees/rebates in the option periods. We have no basis to object to N&N’s pricing scheme.¹

¹ We reject SatoTravel’s argument that under N&N’s pricing scheme, there is no legally binding consideration between N&N and the agency. In this regard, the RFP contemplated the award of a fixed-price requirements contract; while the RFP did not provide a “guaranteed minimum” in terms of the dollar value of services to be procured, the resulting requirements contract mandates that the agency procure the referenced services exclusively from N&N and that N&N provide all of those
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In any event, assuming, arguendo, that discount fees/rebates were not consistent with the terms of the RFP, SatoTravel has failed to demonstrate prejudice. In this regard, there is nothing in SatoTravel's proposal or the procurement record to indicate that the firm ever considered proposing a service fee of zero. In fact, SatoTravel's proposed service fees for the base and option periods were significantly higher than zero and increased each year over the term of the contract. We agree with the agency's position, which SatoTravel does not meaningfully rebut, that only if SatoTravel had been willing to propose a service fee of zero (or an amount close to zero) could it reasonably argue that it was prejudiced by not being made aware that the agency would consider discount fees/rebates. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). SatoTravel has failed to make the required showing.

SatoTravel also questions the agency's affirmative determination that N&N, in light of N&N's internal financial arrangements, was responsible and capable of satisfying contract requirements.²

A determination that an offeror is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. Thus, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may not have been met. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2001). Neither exception applies here.³ Moreover, issues relating to N&N's actual performance of

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services. The essence of a requirements contract is twofold--the government agrees to satisfy all its requirements from one contractor and the contractor agrees to fill all those requirements. Satellite Servs., Inc., B-280945 et al., Dec. 4, 1998, 98-2 CPD ¶ 125 at 4. Such is the case here.

² Contrary to SatoTravel's speculation, there is no basis to question that N&N, as the proposing entity and awardee, is the legal entity responsible for performing the contract.

³ SatoTravel also questions the agency's price reasonableness determination in light of N&N's no-cost pricing scheme. (The record shows that during discussions, the agency expressed some concern that N&N may have overestimated its profit margin. In response, in its final proposal revision, N&N reduced the amount of its proposed discount fees/rebates. The agency determined that N&N's price was fair and reasonable.) SatoTravel's concern that N&N's proposal is unreasonably low-priced
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the contract involve matters of contract administration which are not reviewed by our Office. 4 C.F.R. § 21.5(a).

On this record, where the RFP stated that past performance was approximately equal in importance to price and where N&N's proposal would result in no costs to the government, we conclude that the agency reasonably determined that it could not justify the payment of a significant price premium to SatoTravel, despite its exceptional/high confidence performance rating. Accordingly, we have no basis to object to the agency's tradeoff decision resulting in the selection of N&N's technically acceptable, no-cost proposal for award.

The protest is denied.⁴

Anthony H. Gamboa
General Counsel

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constitutes a challenge to the submission of a below-cost or low profit proposal. These types of proposals are not illegal and provide no basis for challenging an award of a fixed-price contract to a responsible contractor, like N&N, since fixed-price contracts are not subject to adjustment during performance, barring unforeseen circumstances. GTSI Corp., supra, at 5. Here, in the absence of unforeseen circumstances, N&N, not the agency, will bear all financial risks, including a low profit margin.

⁴ In its initial protest, SatoTravel also argued that N&N's proposal was technically unacceptable in the areas of staffing and subcontracting plan. In its administrative report, the agency addressed these issues. In its comments on the agency report, SatoTravel did not rebut the agency's position on these issues. Accordingly, we deem these matters to be abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520 at 4 n.2.